

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
IT&E OVERSEAS, INC.,)	
Assignor)	WC Docket No. 08-54
)	
and)	
)	
PTI PACIFICA INC.,)	
Assignee)	
)	
Application for Assignment of Domestic and)	
International Authority Under Section 214 of)	
the Communications Act, as Amended)	

**JOINT OPPOSITION TO PETITION TO CONDITION GRANT OF DOMESTIC
SECTION 214 APPLICATION**

PTI Pacifica Inc. ("PTI Pacifica") and IT&E Overseas, Inc. ("IT&E") (together "Applicants") jointly file this opposition to the *Petition to Condition* filed May 12, 2008, by Choice Phone, LLC, Pacific Data Systems, Guam Cellular and Paging Inc., and GTA TeleGuam, LLC (collectively, "Petitioners"), each of whom is a carrier in the Commonwealth of the Northern Mariana Islands ("CNMI") and/or Guam.¹

Petitioners' central claim is that the rates charged by PTI Pacifica to utilize its inter-island fiber optic cable – a facility that is not part of this transaction – "are exceedingly high."² Although the Petitioners do not seek to stop the transaction, they request that the Commission

¹ Petition to Condition filed by Choice Phone, LLC, Pacific Data Systems, Guam Cellular and Paging, Inc., and GTA TeleGuam, LLC, WC Docket No. 08-54, May 12, 2008 ("*Petition to Condition*"). Concurrently, Petitioners filed a separate, identical Petition to Condition referencing other proceedings related to the transaction. A separate opposition (focusing on procedural issues) is filed today in the other proceedings against that Petition to Condition.

² *Petition to Condition* at 9.

condition a grant so as to require PTI Pacifica to divest some capacity on its inter-island submarine cable or, in the alternative, to “impose safeguards” to ensure lower rates for use of that facility.³ The FCC previously rejected a request for relief by one of the Petitioners regarding this very same inter-island cable and the very same rate levels.⁴ Petitioners have presented no new facts or arguments that would warrant a reversal of the Commission’s earlier finding.

Petitioners raise two subsidiary arguments in support of their requested relief: PTI Pacifica’s alleged dominance in 1+ long distance market share in CNMI and its CMRS spectrum aggregation. These arguments are addressed below before turning to Petitioners’ central claim.

1+ Long Distance Services

Petitioners challenge Applicants’ claim that they face significant competition in the long distance market.⁵ In support, Petitioners point to 2003 data indicating that PTI Pacifica, when combined with IT&E, would have a market share in excess of 90% for 1+ long distance services in CNMI.⁶ As the Commission has previously found, however, the market share number for 1+ service does not accurately describe the competitive landscape for long distance services. This is because statistics applicable only to 1+ calling are likely to overstate market shares (and therefore understate the level of competition).⁷ The Commission noted that, “[i]n recent years, . . . an increasing number of customers are choosing to have no PIC . . . More importantly, this

³ *Id.* at 11.

⁴ *Application of Bell Atlantic New Zealand Holdings, Inc., Assignor, and GTE Pacifica, Inc., Assignee, for the Assignment of Personal Communications Service (PCS) License WQCV808 (MTA 050)*, DA 06-2197, 21 FCC Rcd 12079 (2006) at paras. 24-31 (“*MTA 050 Order*”) (denying Petition to Deny of GTA TeleGuam).

⁵ *Petition to Condition* at 6.

⁶ *Id.* Petitioners claim at 5 that IT&E is “the dominant telecommunications provider in Guam” is completely unsupported. In fact, the only carrier in Guam classified as dominant under FCC rules is one of the Petitioners, GTA TeleGuam, the ILEC in Guam.

⁷ See *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, 22 FCC Rcd 16440 (2007), at para. 41.

[reliance on a 1+ calling] approach to calculating market shares fails to take into account possible usage substitution between wireless and wireline long distance services (for customers that subscribe to both wireless and wireline telephone services)”⁸

In focusing on 1+ calling, the Petitioners also have not taken into account the increasing number of customers who have jettisoned their wireline phones altogether. In this regard, USAC data demonstrate that this is a rapidly growing phenomenon.⁹ For example, the number of working loops operated by The Micronesian Telecommunications Corporation (“MTC”), the ILEC in CNMI, declined approximately 15 percent between 2006 and 2008 (from 24,480 to 20,926).¹⁰ Similarly, GTA TeleGuam, the ILEC in Guam, experienced a decline of approximately ten percent between 2004 and 2008 (from 69,369 to 62,640).

This decline in wireline working loops is attributable, in part, to the growth of wireless calling. The Commission’s 2008 Wireless Competition Report notes that:

[W]ireless substitution has grown significantly in recent years. Between the end of 2001 and 2006, the total RBOC access lines dropped 23 percent, from 161 million to 124 million lines. In 2006 alone, the RBOCs lost almost 7 percent of their wireline access lines, with wireless substitution being a significant reason. According to the 2006 National Health Interview Survey (“NHIS”), 11.8 percent of adults, or one out of every 8, lived in households with only wireless phones in the second half of 2006.¹¹

The Commission added that the decline in wireline access lines is a trend that “appear[s] to be due to the relatively low cost, widespread availability, and increased use of wireless service.”¹² Consistent with that observation, the decline in wireline access lines in CNMI and Guam is hardly surprising given the availability of free wireless long distance calling plans that

⁸ *Id.*

⁹ See annual data reported at <http://www.usac.org/about/governance/fcc-filings/>.

¹⁰ MTC is the parent corporation of PTI Pacifica.

¹¹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, 23 FCC Rcd 2241 (2008), at para. 246.

¹² *Id.* at para 249.

are offered by multiple wireless carriers in both territories.¹³ This wireless long distance alternative provides a significant competitive check on PTI Pacifica's ability to raise long distance rates unreasonably.

Petitioners also attempt to downplay the importance of pre-paid calling cards in determining the level of long distance competition in CNMI and Guam. Petitioners suggest in this regard that "many pre-paid calling cards focus solely on narrow niche international long distance markets, and would not serve as adequate examples of competition for long distance services provided between the CNMI, Guam, and the rest of the United States of America."¹⁴ Petitioners' statement represents an acknowledgement that pre-paid calling cards do present an important alternative to 1+ long distance calling, especially for the significant segments of the territories' population with international ties. More importantly, however, the argument ignores the fact that, as Petitioners acknowledge, CNMI and Guam are "low income regions."¹⁵ As a result, low income residents, foreign itinerant workers who are common on the islands,¹⁶ and military personnel and family members¹⁷ are far more prone to utilize pre-paid calling cards or neighborhood calling centers than is the population of the United States mainland.¹⁸ Accordingly, pre-paid long distance calling alternatives in CNMI and Guam would likely present a stronger indicator of competition in the long distance market than might be expected elsewhere in the United States.

¹³ See, e.g., the web sites for Saipancell (trade name of Petitioner Guam Cellular) and I-Connect (trade name of Petitioner Choice Phone).

¹⁴ *Petition to Condition* at 6, n. 20.

¹⁵ Petitioners note that the per capita GDP is only \$12,500 in the CNMI and \$15,000 in Guam, as compared with \$46,000 for the U.S. overall. *Petition to Condition* at 3.

¹⁶ See, e.g., Cohen Predicts Influx of Foreign Workers, Guam News, April 22, 2008 (Recent legislation will allow more foreign workers into Guam because it has surpassed the cap of 66,000 foreign worker visas).

¹⁷ See *id.* (8000 Marines are to be moved from Okinawa to Guam).

¹⁸ For an example of a CNMI calling center, see <http://www.ezsaipan.com/aboutus.php>.

Wireless Services

While Petitioners make a vague claim that allowing PTI Pacifica to acquire IT&E's wireless operations would lessen competition, no showing to that effect is made.¹⁹ Instead, Petitioners' argument consists of summarizing the Applicants' own showing in their wireless assignment application.²⁰ Applicants had explained that, if the Commission were to grant PTI Pacifica's applications to acquire IT&E's CMRS spectrum and PTI Pacifica's separate application to acquire 700 MHz spectrum won at auction, PTI Pacifica would have 107 MHz of CMRS spectrum in the CNMI and thereby trigger the FCC's 95 MHz CMRS spectrum aggregation screen.²¹ Applicants also, however, demonstrated that the Commission previously has approved spectrum aggregations of 107 MHz in much larger markets where, as here, there is significant competition.²² It is noteworthy that the Petitioners did not claim that there is a lack of available CMRS spectrum for other competitors to serve a small market like CNMI (population

¹⁹ Petitioners can hardly argue that PTI will be in a position of dominance over wireless services following the merger, when Petitioner Guam Cellular and Paging Inc. is owned by international telecom giant NTT DoCoMo, Inc., which is in turn owned in significant part by the Japanese government. *See Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, WT Docket No. 06-96, 21 FCC Rcd 13580 (2006). Guam Cellular already holds several CMRS licenses for Guam/CNMI, including Cellular, Broadband PCS and 700 MHz spectrum that puts it in position to vigorously compete with PTI.

²⁰ *Petition to Condition* at 7-8, citing Applicants' Exhibit 2, ULS File No. 0003356838 (filed April 4, 2008).

²¹ The FCC screen was set at 95 MHz not to bar aggregations above that amount but "to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation is identified and subjected to more in-depth analysis." *See Applications of AT&T Inc. and Dobson Communications Corporation*, 22 FCC Rcd 20295 (2007) at para 30. Even that screen is too strict here because, as discussed below, it does not take into account 80 MHz of AWS spectrum in CNMI that the FCC is set to auction in August.

²² ULS File No. 0003356838 (filed April 4, 2008) Exhibit 1 at page 3 of 6, *citing Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent for Assignment of Licenses and Authorizations*, 23 FCC Rcd 2234 (2008) ("Aloha Order").

of 69,221).²³ Indeed, they could not credibly claim lack of spectrum, as the small CNMI population creates fewer capacity demands on carriers; and in any event the Commission has initiated a proceeding to auction an additional 90 MHz of CMRS spectrum (10 MHz PCS and 80 MHz AWS) that is available in CNMI for incumbents and new entrants.²⁴

Undersea Cable Rates

The Petitioners' wireline long distance and wireless spectrum aggregation arguments are peripheral to Petitioners' central allegation that the rates PTI Pacifica charges for use of its undersea cable are unreasonably high. One of the Petitioners – GTA TeleGuam, LLC – raised this identical argument in connection with its challenge in 2006 to another CMRS transaction involving PTI Pacifica.²⁵ That argument was soundly rejected by the Commission when it held that:

After reviewing TeleGuam's arguments and the record . . . we conclude that permitting [PTI] to offer mobile telephony service in both Guam and the CNMI while providing the only inter – island cable transport presents a minimal risk of harm to competition. As discussed in detail below, we find that TeleGuam has not demonstrated that the cable rates are unreasonable, or that these rates have prevented carriers from transporting inter-island traffic on a basis that is competitive with [PTI].²⁶

In reaching this conclusion, the Commission correctly noted that competition in the CNMI and Guam markets was thriving, and that TeleGuam had not adequately supported its claim that PTI's undersea cable rates presented a risk of harm to competition. The Commission

²³ See Public Notice DA 07-4171, released October 5, 2007, at A-21. The CMAs in the *Aloha Order* in which the FCC allowed AT&T to aggregate 107 MHz (the same amount PTI Pacifica would have in CNMI) had populations ranging from 1.7 to 4 times greater than CNMI's.

²⁴ FCC Public Notice: *Auction of AWS-1 and Broadband PCS Licenses Scheduled for August 13, 2008*, AU Docket No. 08-46, DA 08-1090, May 16, 2008.

²⁵ See *Petition to Deny of TeleGuam Holdings, LLC*, ULS File No. 0002401623, December 28, 2005.

²⁶ *MTA 050 Order* at para. 25.

determined, moreover, that “there is an inadequate basis in the record for concluding that the current cable rates are unreasonable”²⁷

The *Petition to Condition* suffers from the same deficiencies as TeleGuam’s prior petition. The undersea cable rates that PTI Pacifica charges today have not changed since the 2006 proceeding. Yet the only new “fact” offered by Petitioners in support of their requested relief is a rudimentary comparison between PTI Pacifica’s DS-1 and DS-3 monthly rates for the inter-island cable and the rates for DS-1 and DS-3 services tariffed by the National Exchange Carrier Association (“NECA”), presumably for predominately terrestrial services.²⁸ The NECA pool rates do not take into account the specific costs of providing submarine cable services in remote, insular areas like Guam and CNMI, areas which the Petitioners acknowledged “are both high cost.”²⁹ Moreover, the costs of maintaining and repairing the cable are significant both in terms of dollars and of management time. Thus, Petitioners’ citation of NECA rate schedules for terrestrial services applicable to the mainland is inapposite.³⁰

Moreover, as was the case in 2006 when the Commission last ruled on this very same issue, carriers today are able to move traffic between CNMI and Guam efficiently and cost effectively, as evidenced by the thriving wireless and long distance competition in both Guam

²⁷ *Id.* at para. 26.

²⁸ *Petition to Condition* at 9.

²⁹ *Petition to Condition* at 3. For example, based on USAC projections, total monthly high-cost support in Guam was \$6.03 per working loop, which is 2.5 times the national average of \$2.34. See USAC 2Q07 FCC filing, App. HC-01 (support), App HC-08 (line counts).

³⁰ In its 2006 decision the Commission provided examples of the type of evidence that might be useful for a rate evaluation regarding services provided over PTI Pacifica’s submarine cable, but the Petitioners failed to submit such evidence. See *MTA 050 Order* at para. 26.

and CNMI.³¹ Petitioners' claims about what might occur if this transaction is approved are therefore speculative and not well supported.³²

In any event, an assignment application is not an appropriate proceeding to address the detailed cost factors that underlie the reasonableness of PTI Pacifica's undersea cable rates, especially considering that this would unduly delay the substantial benefits associated with the transaction and considering that the Petitioners have other, more appropriate, avenues of relief under Title II of the Communications Act. For example, in denying GTA TeleGuam's identical arguments in 2006, the Commission pointed to one such remedy and concluded: "[s]uch a remedy will adequately protect the public interest from any anti-competitive concerns without denying the public the substantial benefits of the assignment."³³ This same analysis fully applies to the instant proceeding. IT&E controls no undersea cable facilities between CNMI and Guam, and nothing about IT&E's operations should reverse the Commission's analysis of the inter-island cable situation.

³¹ In the *MTA 050 Order* cited by Petitioners, the Commission concluded that "permitting [PTI] Pacifica to offer mobile telephony service in both Guam and CNMI while providing the only inter-island cable transport presented minimal risk of harm to competition." *MTA 050 Order* at para. 25. In reaching that conclusion, the Commission assumed that there were no competitive alternatives to Pacifica's inter-island cable, *id.* at n. 80, and correctly found that competition was thriving. *Id.* As a result, the Commission concluded that the MTA 050 transaction would have no adverse affect on mobile telephony competition in either Guam or the combined Guam/CNMI market. *Id.* That conclusion also applies today to the PTI/IT&E transaction.

³² Petitioners' speculative allegation at 8 that PTI Pacifica "could use its market power in one service to subsidize other services" relies on their claim that the inter-island cable rates are unreasonably high – a claim that the FCC found unsupported in 2006 and that is equally unsupported in the *Petition to Condition*.

³³ *MTA 050 Order* at para. 31.

Finally, Petitioners allege that there are “virtually no practical competitive alternatives to PTI’s facilities and services.”³⁴ Assuming for the sake of argument that this is true, the situation is the result of Petitioners’ own business decisions. There are no barriers to entry to build additional undersea cable facilities to connect CNMI and Guam. Indeed, the Commission previously granted a license for what would have been a competing undersea cable among the very same islands.³⁵ The Commission presumably would be willing to issue a license to one or more of the Petitioners for a new inter-island cable if the Petitioners were willing to risk their own capital to build it.³⁶

Conclusion

For the foregoing reasons, Petitioners’ request that the Applicants’ applications be granted subject to condition should be denied.

³⁴ *Petition to Condition* at 8 n.29.

³⁵ *GST Telecom, Inc., Application for a License to Land and Operate a Submarine Fiber Optic Cable Extending Between the Northern Mariana Islands of Saipan, Tinian and Rota and the Territory of Guam*, 12 FCC Rcd 3608 (1997).

³⁶ The Petitioners have substantial resources to call upon. Guam Cellular’s parent company, NTT DoCoMo, had annual revenues in excess of \$40 billion in 2007. See www.investing.businessweek.com/research/stocks/earnings.asp?symbol=DCM (visited May 18, 2008). GTA TeleGuam is majority-owned by Shamrock Capital Growth Fund, LLP, whose general partner is Shamrock Capital Partners, LLC. See FCC Public Notice: *Domestic Section 214 Application Filed for Transfer of Control of the Guam Telephone Authority to TeleGuam Holdings, LLC*, DA 04-3067, September 24, 2004, 19 FCC Rcd 18767. Shamrock has over \$2.0 billion in investments under management.

Respectfully submitted,

IT&E OVERSEAS, INC.

Richard D. Rubino

John A. Prendergast
Richard D. Rubino

Blooston, Mordkofsky, Dickens, Duffy
& Prendergast, LLP
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
(202) 659-0830

Its Attorneys

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PACIFIC TELECOM INC.

Kenneth D. Patrich

Kenneth D. Patrich
Timothy J. Cooney

WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
(202) 783-4141

Its Attorneys

CERTIFICATE OF SERVICE

I, Paula Lewis, do hereby certify that on this 19th day of May, 2008, a copy of the foregoing Joint Opposition to Petition to Condition was served via email upon the following:

Best Copy and Printing, Inc.
Federal Communications Commission
445 12th Street, SW, Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Tracey Wilson-Parker
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A103
Washington, DC 20554
Tracey.Wilson-Parker@fcc.gov

Matt Warner
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C347
Washington, DC 20554
Matthew.Warner@fcc.gov

David Krech
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 7-A664
Washington, DC 20554
David.Krech@fcc.gov

Jim Bird
Office of General Counsel
Federal Communications Commission
445 12th Street, SW, Room 8-C824
Washington, DC 20554
Jim.Bird@fcc.gov

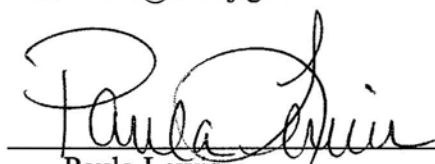
Jay Shedd
CEO
Guam Cellular and Paging Inc.
219 South Marine Corps Drive
Suite 206 Century Plaza
Tamuning Guam 96913
jshedd@guamcell.com

Robert J. Maloney
Chairman & CEO
Pacific Data Systems
95-1146 Anuanu Street
Mililani, HI 96789
rjm@pdshawaii.com

Eric Votaw
Vice President Regulatory and Marketing
GTA Teleguam, LLC
624 N. Marine Corps Drive
Tamuning, GU 96913
evotaw@gta.net

Thomas K. Crowe
Cheng-yi Liu
Law Offices of Thomas K. Crowe, P.C.
1250 24th Street, NW, Suite 300
Washington, DC 20037
firm@tkcrowe.com

John Connors
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
john.connors@usdoj.gov


Paula Lewis